

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UAW LOCAL 6000 and LYNDA TAYLOR, a/k/a  
LYNDA LEWIS,

UNPUBLISHED  
October 26, 2001

Plaintiffs-Appellants,

v

DEPARTMENT OF TREASURY,

No. 224159  
Ingham Circuit Court  
LC No. 99-090353-AW

Defendant-Appellee.

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Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order denying their motion for summary disposition and granting judgment in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The Civil Service Commission (Commission) is authorized to approve or disapprove all disbursements for personal services. Const 1963, art 11, § 5. In June 1997, the Department of Treasury (DOT) sought approval for the disbursement of funds for a personal service contract with BDM International for data processing services. The contract covered the period September 30, 1997 through September 30, 2000. The DOT submitted the request under Civil Service Commission Rule 4-6.<sup>1</sup> The Commission denied the request in an order issued on March 23, 1999. The order stated that the DOT could seek alternative approval of the request under different standards in Rule 4-6.

Rule 4-6 was revised effective January 1, 1999. On May 17, 1999, the DOT initiated a request for approval of disbursement of funds for data processing services to be performed by TRW, BDM's successor, for the period September 23, 1999 through September 22, 2002. The DOT relied on the revised version of Rule 4.6, and supported the request with a revised cost

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<sup>1</sup> This rule has since been amended and renumbered. See Michigan Civil Service Commission Rules, Chapter 7, Disbursements for Personal Services. References in this opinion are to the rules in effect at the time of the requests at issue.

analysis. On June 18, 1999, the Department of Civil Service approved the request. Local 6000 filed an administrative appeal.<sup>2</sup>

Plaintiffs filed suit in circuit court seeking an injunction precluding execution of the contract between the DOT and TRW, and a writ of mandamus to require the DOT to convert the data processing jobs to classified civil service positions as of September 23, 1999. The circuit court denied plaintiffs' motion for a preliminary injunction. The court denied the parties' motions for summary disposition, but granted judgment in favor of the DOT on the ground that the DOT did not violate the Commission's March 23, 1999 order by submitting a new request for disbursement of funds for a different contract. MCR 2.116(I)(2).

This case presents a question of law, which we review de novo on appeal. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

The Commission must approve all disbursements for personal services. If the Commission does not approve disbursement of funds for work to be performed under a personal service contract, that work must be performed by classified state employees. Const 1963, art 11, § 5; Civil Service Commission Rule 4-6.

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second action was or could have been resolved in the prior action; and (4) both actions involved the same parties or their privies. *Baraga County v State Tax Comm*, 243 Mich App 452, 455; 622 NW2d 109 (2000). A second proceeding is not barred if there are changed or new facts, or a change in the law. *Id.* at 457; *In re Hamlet (After Remand)*, 225 Mich App 505, 519; 571 NW2d 750 (1997).

Plaintiffs argue that the circuit court erred by holding that the DOT did not violate the terms of the Commission's March 23, 1999 order. We disagree and affirm the circuit court's decision. The Commission's March 23, 1999 order disapproved the DOT's request for disbursement of funds for data processing work to be performed by BDM from September 30, 1997 through September 30, 2000.<sup>3</sup> Rather than seek approval of that request on alternative grounds, the DOT submitted a new request for disbursement of funds for work to be performed by TRW from September 23, 1999 through September 22, 2002.

Plaintiffs' assertion that the substance of the DOT's second request could have been included in the first request and litigated at that time is without merit. The second request was submitted under the revised Rule 4-6, covered a different period of time, and was supported by a revised cost analysis that was constructed using actual data related to work performed, as opposed to only assumptions. The DOT's second request could not have been resolved in the

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<sup>2</sup> The DOT's brief indicates that a decision was issued on June 1, 2000, granting the request.

<sup>3</sup> DOT was authorized to continue payments under the 1997 contract until September 22, 1999.

proceedings for the first request because it was based on facts not known at the time the first request was made. The doctrine of res judicata did not preclude the DOT from submitting the second request for disbursement of funds. *Sewell, supra*; *Baraga County, supra*. The circuit court correctly granted judgment in favor of the DOT on the ground that the DOT did not violate the Commission's March 23, 1999 order.

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra